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No. 98-1280

In the Supreme Court of the United States

OCTOBER TERM, 1998

EARL ANTHONY WEBB, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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8 pp

QUESTION PRESENTED

Federal Rule of Appellate Procedure 3(c)(1) provides that a "notice of appeal must," among other things, "name the court to which the appeal is taken." The question presented is:

Whether the court of appeals erred in dismissing petitioner's appeal because of his failure to designate in his notice of appeal the court to which he was appealing, where other information in the notice adequately identified the appellate court.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 157 F.3d 451.

JURISDICTION

The court of appeals entered its judgment on October 1, 1998. On December 23, 1998, Justice Stevens extended the time for filing a petition for a writ of certiorari to and including February 19, 1999, and the petition was filed on February 10, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

After entering a guilty plea in the United States District Court for the Eastern District of Michigan,

petitioner was convicted of one count of conspiracy to distribute cocaine, in violation of 21 U.S.C. 846. He was sentenced to 360 months' imprisonment. Pet. App. 2a, 8a.

1. In February 1995, petitioner and six co-defendants were indicted for conspiring to distribute cocaine. After a jury was impaneled, two of petitioner's co-defendants decided to plead guilty. In light of that development, petitioner and the remaining co-defendants also pleaded guilty. Pet. App. 2a. The following day, petitioner wrote a letter to the district court, on behalf of himself and two co-defendants, stating that their pleas were entered as a result of pressure and asking to withdraw them. After a hearing, the district court found no adequate reason to allow petitioner to withdraw his plea and accordingly denied petitioner's motion. *Ibid.*

Petitioner filed a timely notice of appeal in the district court that had entered the conviction, in which he "[gave] notice of the appeal of his final conviction and sentence entered of record on January 9, 1997." Pet. App. 3a, 9a. Petitioner's notice of appeal did not name the court to which the appeal was taken. *Ibid.* It did, however, identify the district court from which the appeal was taken and the presiding judge, and it also provided the criminal-case docket number. *Id.* at 9a.

2. The court of appeals dismissed petitioner's appeal for lack of jurisdiction. Pet. App. 1a-6a. The court initially noted that "the district court's refusal to allow [petitioner] to withdraw his guilty plea did not constitute an abuse of discretion" and that the court of appeals had been "prepared * * * to affirm the judgment of the district court on that basis." *Id.* at 3a. The court held, however, that it lacked jurisdiction over petitioner's appeal. The court noted that Rule 3(c) of

the Federal Rules of Appellate Procedure "requires that a notice of appeal * * * name the court to which the party or parties are appealing," Pet. App. 5a (emphasis omitted), and that the Rule's requirements were "jurisdictional in nature," *id.* at 4a (quoting *Smith* v. *Barry*, 502 U.S. 244, 248 (1992)). Because petitioner's notice of appeal "neglect[ed] to name the court to which his appeal [was] taken as required under Rule 3(c)," the court concluded that the notice "failed to confer jurisdiction upon this court, notwithstanding any absence of prejudice to the government." *Id.* at 6a.

3. On January 21, 1999, the Sixth Circuit granted rehearing en banc in *Dillon* v. *United States*, No. 97-3138, to reconsider whether a prospective appellant's failure to identify the appropriate court of appeals by name in his notice of appeal automatically deprives the appellate court of jurisdiction.

DISCUSSION

1. We agree with petitioner (Pet. 5-12) that the court of appeals erred in ruling that it lacked jurisdiction over his appeal. Where, as here, the notice of appeal contains on its face other information from which the proper appellate tribunal can be discerned, such as the name of the district court from which the judgment originates and sufficient identifying information about the subject matter to foreclose jurisdiction in any non-regional court of appeals, the technical deviation from Federal Rule of Appellate Procedure 3(c)'s terms does not deprive the court of appeals of jurisdiction.

Rule 3(c)(1) directs that a notice of appeal must contain three elements to be effective: (1) it "must * * * specify the party or parties taking the appeal;" (2) it "must * * * designate the judgment, order, or part thereof being appealed;" and (3) it "must * * *

name the court to which the appeal is taken." This Court has held that "Rule 3(c)'s dictates are jurisdictional in nature, and their satisfaction is a prerequisite to appellate review. * * * [N]oncompliance is fatal to an appeal." *Smith* v. *Barry*, 502 U.S. 244, 248 (1992).

Rule 3(c)(4) further provides, however, that "[a]n appeal must not be dismissed for informality of form or title." This Court, moreover, has held that, even if a notice of appeal is "technically at variance with the letter of a procedural rule," the court of appeals will have jurisdiction if "the litigant's action is the functional equivalent of what the rule requires." *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312, 316-317 (1988); see also *Smith* v. *Barry*, 502 U.S. at 248 ("[C]ourts should construe Rule 3 liberally when determining whether it has been complied with.").

The court of appeals accordingly erred in treating the notice of appeal's failure to identify the Sixth Circuit by name as dispositive of the jurisdictional inquiry. Instead, the court should have gone on to inquire whether the content of the notice of appeal otherwise reasonably conveyed the same information and thus performed the "functional equivalent" of naming the appellate tribunal.

Petitioner's notice of appeal did that. The notice identified the judgment subject to appeal as originating from the United States District Court for the Eastern District of Michigan and as involving review of his "final conviction and sentence." Pet. App. 9a. The docket number's use of "CR" further confirmed that the appeal was from a judgment in a criminal case. See *ibid.* By law, an appeal from the Eastern District of Michigan in a criminal case could proceed to only one court of appeals—the Sixth Circuit. 28 U.S.C. 41, 1291,

1294(1). Petitioner therefore provided fair notice that his appeal was being taken to the Sixth Circuit. See *Smith* v. *Barry*, 502 U.S. at 248 ("[T]he notice afforded by a document * * * determines the document's sufficiency as a notice of appeal.").[1]

2. We disagree, however, with petitioner's contention (Pet. 5-12) that plenary review or summary resolution of the issue is appropriate at this time. As previously noted (see also Pet. 5 n.2), the Sixth Circuit has granted rehearing en banc in another case, *Dillon* v. *United States*, No. 97-3138 (Jan. 21, 1999), to reconsider the very issue raised by the petition. By letter dated February 24, 1999, the United States advised the Sixth Circuit that it did not agree with the panel's jurisdictional analysis in *Dillon* and thus would oppose the panel's judgment before the en banc court. The Sixth Circuit has ordered simultaneous briefs to be filed by April 26, 1999, and has scheduled oral argument for June 9, 1999.

Petitioner's claim of a circuit conflict and departure from this Court's precedents (Pet. 5-12) is thus premature. If the en banc Sixth Circuit agrees with the

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[1] Petitioner correctly recognizes (Pet. 5-7) that the court of appeals' decision in this case is inconsistent with decisions of the District of Columbia, Fifth, and Seventh Circuits. See *Bradley* v. *Work*, 154 F.3d 704, 707 (7th Cir. 1998) ("This court has held that it will not dismiss on mere technicalities, including in the naming of the court to which a judgment is being appealed, if the notice as a whole is not misleading."); *Anderson* v. *District of Columbia*, 72 F.3d 166, 168 (D.C. Cir. 1995) (per curiam) ("[A]lthough Anderson named the wrong appellate court in his notice of appeal, because it was obvious in which court his appeal properly lay, Anderson gave fair notice to the opposing party and the court."); *McLemore* v. *Landry*, 898 F.2d 996, 999 (5th Cir.) ("River Villa's intent to appeal to this court is made manifest by the fact that this is the only court to which an appeal may be had."), cert. denied, 498 U.S. 966 (1990).

United States and petitioner here and holds that Rule 3(c) is satisfied by notices of appeal that contain information that is functionally equivalent to identifying the appellate court by name, there will be no circuit conflict or deviation from this Court's decisions for this Court to address. Petitioner, however, should be put in a position to have any such rule applied to him. Thus, while plenary review is not currently warranted, it is appropriate to give the Sixth Circuit the opportunity to reconsider its jurisdictional ruling in this case in light of the position ultimately adopted by the en banc court in *Dillon*.[2] Accordingly, the petition for a writ of certiorari should be granted, the judgment of the court of appeals should be vacated, and the case should be remanded for disposition in light of the en banc court's eventual decision in *Dillon* v. *United States*, *supra*.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment should be vacated, and the case should be remanded to the court of appeals for disposition in light of the en banc Sixth Circuit's eventual decision in *Dillon* v. *United States*, No. 97-3138.

Respectfully submitted.

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APRIL 1999

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[2] The government will advise this Court of any decision by the en banc Sixth Circuit in *Dillon* if such a decision is issued before this Court's disposition of the instant petition.